City and County of San Francisco

Rent Board

FACT SHEET NUMBER 1

GENERAL INFORMATION

By the
Residential Rent Stabilization
and
Arbitration Board

December 1996

FACT SHEET NO. 1, RENT BOARD GENERAL INFORMATION

THE RENT BOARD & WHAT IT DOES

The Rent Board is an agency of the City and County of San Francisco. The Rent Ordinance mandates certain rights, obligation and services for both tenants and property owners. The Rent Board provides for hearings on the following issues:

I. HEARINGS

A. ARBITRATION HEARINGS

1. **DECREASED HOUSING SERVICES** — for tenants who feel that they have lost a housing service that was either promised, provided or reasonably expected and have not had a corresponding reduction in their rent. The Rent Board will arbitrate the matter and determine if a substantial housing service has been lost or not provided as promised or expected and what the value of that service is. The Rent Board can order a reduction in rent for the lost service but cannot compel the owner to restore the service;

2. **FAILURE TO REPAIR** — tenants can file a petition for "failure to repair and maintain" as a defense against a proposed annual allowable rent increase or a operating and maintenance expense petition, but can only be used within 60 days of the time the notice of increase is given;

3. **RENT OVERPAYMENTS** — tenants can request refund of overpayments and readjustment to the proper rent amount due to improper rent increases;

4. **CAPITAL IMPROVEMENTS AND OPERATING EXPENSES** — owners may petition to pass through to the renter the cost of certain capital improvements to the property or larger-than normal increases in operating and maintenance expenses. See **Fact Sheet #5, "Tips for Preparing a Landlord Petition."**

B. MEDIATION HEARINGS

The Rent Board is now offering mediation of certain types of tenant/landlord issues. The benefit of mediation is that the tenant and landlord make the agreement that resolves their issues, as opposed to an arbitration hearing in which the hearing officer imposes the decision.

Mediation is a win/win for everyone and you know the results when you leave. Be sure to ask about mediation and whether or not it is appropriate for you.

II. OTHER RIGHTS PROVIDED FOR TENANTS OR LANDLORDS INCLUDE

1. Tenants may raise legitimate objections to the proposed additional rent increases as noted in item #4 above;
2. Owners may "bank", or accumulate allowed annual increases that are not imposed and give them in subsequent years. They may impose all or part of a banked increase on the tenant's next anniversary date; or, if the increase is given after this date, then the effective date of the increase becomes the new anniversary date. No annual increases can then be given for another 12 months;
3. The Rent Board determines the annual allowable increase amount that landlords are automatically entitled to impose. This amount is a percentage increase of a tenant's base rent and is set each March 1st. An owner can only impose one annual allowable increase per year. Owners may "bank" an increase they do not impose as noted above in II. 2.
4. Owners may evict a tenant for one or more of 13 'just cause' reasons, such as:
   - Failure to pay rent;
   - Creating a nuisance;
   - Lease violations;
   - Owner or immediate relative occupancy as a primary residence.
5. Tenants can request an investigation of questionable eviction attempts;
6. Tenants can receive moving expenses from the property owner for certain temporary relocations resulting from evictions for capital improvement work to be done.

III. COUNSELING SERVICES

Our staff of counselors is available to give you advice about the Rent Ordinance and how it applies to your individual situation. If you are filing a petition, we will advise you as to how to complete your petition and what you need in order to present your best case to the hearing officer. Please understand that we answer several thousand questions a month and sometimes the lines will be busy if you call. You can also visit the office or call our 24-hour information line and review any of the 65 topics covering our most frequently asked questions.

IV. THE HEARING PROCESS

1. **FILING A PETITION**
   For most of the previously mentioned issues, the tenant or owner must file a written petition with the Rent Board. This petition tells us and the other party what is being requested, including the dollar amount. The petition forms contain tips on how to properly prepare your petition. Fact Sheet #5, "Landlord Tips," and Fact Sheet #6, "Tenant Tips," also advise petitioners about petition preparation.

2. **THE HEARING**
   Once the petition has been determined to be complete, the case is scheduled for a hearing, usually within 45-60 days. The hearing officer is a neutral party who will conduct an informal hearing and allow both sides to present their case. The hearing officer will review all the facts in the case and issue a written decision within 45-60 days. We also offer an expedited hearing process for certain types of cases, which can reduce the amount of time it takes to issue a decision by two-thirds. Mediation services may also be offered as an alternative to an arbitration hearing.

3. **APPEALS**
   If either party believes the decision is in error, they can appeal to the Rent Board Commission, which is composed of tenant, landlord and neutral representatives. They will consider your appeal and decide to either uphold the hearing officer's decision, remand it to the hearing officer for a partial or new hearing, or they may hear the appeal themselves. The Commission's decision is final unless a Writ is filed with the Superior Court.

V. WHAT THE RENT BOARD DOESN'T DO

Many people are frustrated because they cannot get answers to all their questions when they call us. However, the staff can only answer those questions which pertain to the Rent Ordinance. While many questions are related to the Ordinance, many others concern topics covered by State law. Our staff cannot give legal advice on these matters, nor can they offer their opinions. You may need to contact an attorney for legal advice. We will refer you to an appropriate resource if we cannot answer your question.

Some of the issues we CANNOT give legal advice about are:
lease issues, including subleases; how to recover unreturned security deposits; how to evict or to prevent an eviction (note that we only investigate allegations of wrongful eviction as defined by the Ordinance); housing discrimination; remedies for State law issues such as rent withholding, repair and deduct or habitability; privacy matters; and harassment problems. However, we will refer you to an appropriate resource for non-Rent Board matters.

VI. COPIES OF THE ORDINANCE AND THE RULES AND REGULATIONS

You can purchase a copy of the Ordinance and/or the Rules and Regulations, which are the policies and procedures by which the department implements the Ordinance. We recommend that you obtain both, since the Rules explain how the Ordinance is applied. They are $3.00 each, or $6.00 for both. They are also available by mail for $9.00 for the package, which includes postage. You can send us a check, made payable to the "Rent Board" for $9.00 and we will mail copies to you. If you are a property owner or plan to be, you really need to have a copy of both so that you can be informed as to how to comply with the regulations pertaining to rent control.

We also sell copies of "California Tenant", a state publication that has advice about state law as it affects both tenants and landlords. It is available at the office for $2.00 or $2.75 by mail.

VII. UNITS COVERED BY THE RENT LAW

- Any building built before June 1979.

- PLEASE NOTE: Proposition I, which became effective Dec. 22, 1994, eliminated the exemption for owner-occupied buildings containing 2-4 units. Tenant-occupied units in these buildings are now subject to the ordinance, including roommates of owner-occupants.

VIII. UNITS EXEMPT FROM THE ORDINANCE

- Buildings built after June 1979;
- Housing accommodations where the tenant has resided for less than 32 days;
- Units where the rent is subsidized and rent increases are regulated by another governmental agency such as public housing, Section 8, etc.;
- Buildings exempted through a Rent Board petition process.

IX. REPAIR PROBLEMS

The Rent Board cannot compel an owner to make repairs to your unit or building, but you can file a petition as a defense against an annual rent increase if the repairs have been **requested** and are **required**. For more information on how to get repairs performed in your building, see our **Fact Sheet #2, "Repairs."**

X. SECURITY DEPOSITS

Although not part of the rent law, we can tell you that State law requires security deposits to be refunded within three (3) weeks of the tenant moving out. Bad faith failure to return the deposit can subject the owner to a $600 penalty. We cannot determine for you what constitutes "reasonable" charges for cleaning or damage, nor can we help you obtain a refund. You will need to seek legal advice or go to Small Claims Court in order to recover a refund of your deposit. See **Fact Sheet #3, "Security Deposits & Interest on Deposits."**

XI. INTEREST ON DEPOSITS

This matter is not part of the Rent law, but is contained in Chapter 49 of the Administrative Code. All tenants, including those who live in owner-occupied buildings that are exempt from the rent law, are entitled to interest on their security deposit. The law requires that 5% interest on deposits be paid annually to tenants since 1983. To be eligible, a tenant must have been in residence for 12 full months. Eligible tenants who move after more than 12 months of residency are

entitled to a pro-rated payment. Call our 24-hour information line at 252.4600 and press 4-2 for more information of this law.

The Rent Board cannot help you recover unpaid interest. You will need to seek legal advice or go to Small Claims Court in order to recover unpaid interest. Please note that the landlord can deduct the annual Rent Board Fee ($10) from any payment of interest made to you. This fee defrays the cost of the operation of the Rent Board. As a result of this fee, there is no cost assessed for filing a petition. See **Fact Sheet #3, "Security Deposits & Interest on Deposits"** for more information.

XII. EVICTION ISSUES

Tenants cannot be evicted from a building subject to the Ordinance unless it is for one of 13 "just cause" reasons. Some of those reasons include:

- Failure to pay rent or habitual late payment and the tenant has been duly warned;
- Creating a nuisance;
- Lease violations;
- Owner-occupancy, or occupancy by a member of the landlord's immediate family;
- Temporary eviction to perform capital improvement work.

For owner-occupancy evictions ONLY, the landlord must be acting in good faith and with honest intent and must live in the unit for at least 12 continuous months. Just cause is not necessary in any case if the building is exempt from the Ordinance. Because evictions are primarily governed by state law, the Rent Board has very limited powers in these matters. If you are being evicted or are attempting an eviction, we strongly suggest that you seek competent legal counsel. We will advise you to the extent that we can, but we cannot give legal advice. For more information on this issue, please see **Fact Sheet #4, "Eviction Issues," or call our 24-hour information line and press 6-0.**

PLEASE NOTE THAT THIS IS NOT A COMPLETE EXPLANATION OF OUR SERVICES. THE INFORMATION CONTAINED IN THIS BROCHURE WAS ACCURATE AS OF DECEMBER 1996. THIS INFORMATION IS SUBJECT TO CHANGE WITHOUT NOTICE.

"FAX FACTS" 252.4660 THE NEW RENT BOARD 24-HOUR FAX BACK SERVICE

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http://www.ci.sf.ca.us/rentbd/

Look us up!

HOW TO FIND US

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SAN FRANCISCO RENT BOARD
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SUITE 320
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FAX NUMBER.....252.4699
ADMINISTRATIVE OFFICES ONLY.....252.4601

12/96

City and County of San Francisco

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FACT SHEET NUMBER 2

REPAIR PROBLEMS

By the
Residential Rent Stabilization
and
Arbitration Board

December 1996

FACT SHEET NO. 2, REPAIR PROBLEMS

THE ISSUE: You need to get your landlord to make repairs, or, if you're the landlord, you need to get your tenant to cooperate with you to get repairs done. What do you do?

A. WE SUGGEST THAT TENANTS CONSIDER THE FOLLOWING:

1. WRITE THE OWNER OR MANAGER A LETTER AND LIST THE PROBLEMS YOU WANT FIXED.

State that you want a response within a reasonable time period (5 or 10 days) that indicates when the repairs will be made. 30 days is considered reasonable for the work to be done unless it is a critical service. Indicate the best time and phone number that you can be reached at in order to make an appointment. You should also request a written confirmation.

2. IF YOU RECEIVE NO RESPONSE,

or the work is not done as promised and no satisfactory explanation is offered, write a second letter and state that unless the repairs are done, the Housing Inspector may be called and/or a petition may be filed at the Rent Board for a rent reduction due to a

EDUCATE YOURSELF —
RESOURCES: NOLO PRESS
PUBLICATIONS: TENANTS RIGHTS; or THE LANDLORD LAWBOOK, VOL. 1, RIGHTS AND RESPONSIBILITIES available at major bookstores or by phone, 510.549.1976.

THIS INFORMATION IS SUBJECT TO CHANGE WITHOUT NOTICE. PLEASE CALL OUR OFFICE IF YOU HAVE ANY QUESTIONS.

decrease in services if the repairs are not completed by a specific date.

3. IF THERE IS STILL NO RESPONSE,

you should contact the Housing Inspection Division at 558-6220 and file a complaint. You should obtain a copy of the inspector's report. We recommend that you have the report stamped as a certified copy by the inspector's office. Be sure to stay in touch with the inspector until the repairs are completed. You may file a petition regarding decreased housing services at the Rent Board at any point during this process. However, a "failure to repair" petition can only be filed within 60 days of receiving notice of an annual rent increase.

4. KEEP COPIES OF ALL LETTERS YOU SEND OR RECEIVE

and keep an organized log of all phone calls or discussions and what was said or agreed to, since this information will be useful in a Rent Board hearing if one is necessary.

5. REMEMBER, ONLY THE HOUSING INSPECTOR CAN ORDER REPAIRS TO BE MADE AND ONLY THE RENT BOARD CAN ORDER THE RENT TO BE REDUCED

for a lost housing service or prevent an otherwise allowable rent increase from being imposed due to the landlord's failure to repair.

CAUTION:
RENT WITHHOLDING OR REPAIRING

AND DEDUCTING FOR REPAIRS not made are risky remedies that can subject a tenant to eviction unless done properly, preferably under the advice of an attorney. **Remember, you should first give the owner notice of the conditions and a reasonable amount of time to repair them.**

B. WE SUGGEST THAT LANDLORDS CONSIDER THE FOLLOWING:

If you need to gain entry to make repairs, you must give the tenant adequate notice - usually 24 hours - before you wish to enter. Your notice should be in writing, clearly state the time of entry and the repairs to be done, and the expected length of time it will take to do the repairs.

State law provides you with certain rights in terms of your ability to make repairs. A tenant's failure to allow entry could jeopardize their tenancy. The Rent Board cannot provide you with legal advice on this matter, so you should contact an attorney or review the publications listed below for more information as to your rights.

If a tenant calls and requests that a repair be made, be prompt in responding, even if you cannot make the repair immediately. Your quick response lets them know you are concerned and helps maintain your relationship with your most valuable customer — your tenant.

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FACT SHEET NUMBER 3

SECURITY DEPOSITS AND INTEREST ON DEPOSITS

By the
Residential Rent Stabilization
and
Arbitration Board

December 1996

FACT SHEET NO. 3, SECURITY DEPOSITS AND INTEREST ON DEPOSITS

SECURITY DEPOSITS

The law regarding security deposits (with the exception of the law regarding payment of interest on deposits) is state law and applies to all residential dwelling units in California, whether or not covered by rent control. The law regarding interest on deposits is a San Francisco law and applies to all residential dwelling units in San Francisco, also regardless of whether or not they are covered by rent control.

▲ MOVING IN

A landlord may charge a tenant a deposit to move into a residential dwelling unit. This deposit may be used at the owner's discretion as an advance payment of rent, "last month's rent", a pet deposit, cleaning deposit, as security for unpaid rent or for repairs of damages to the premises caused by the tenant beyond "ordinary wear and tear." For example, a carpet that is only 3 years old and has a serious stain in it would probably qualify for a deduction from the security deposit. What constitutes normal wear and tear is something the Rent Board cannot determine or advise you about. A landlord may charge up to two months rent for an unfurnished unit and up to three months rent for a furnished unit.

Because the law requiring interest to be paid on deposits is NOT part of the Rent Ordinance we cannot arbitrate this issue nor can we give provide legal advice on this issue or how to recover interest owned or refunds on deposits. If you are a tenant and the owner refuses to pay the interest amount you are lawfully entitled to, you should first write a demand letter requesting the return of your deposit. If there is no response or it is not satisfactory, you will either need to go to Small Claims Court, use a mediation/arbitration service, or consult an attorney. The District Attorney's Consumer Fraud Office will help mediate this and other deposit issues. They can be reached at 552.6400.

RESOURCES USED TO COMPILE THE ABOVE INFORMATION INCLUDE: California Civil Code section 1950.5, San Francisco Administrative Code Chapter 49, Nolo Press, Small Claims Court, Community Boards.

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▲ DURING THE TENANCY

The deposit is paid "on or before initial occupancy" of the tenant. State law is silent on the issue of increases in deposit after the payment of the initial deposit. If ownership of the property changes during the tenancy, the landlord may either transfer the deposit to the new owner or return the deposit to the tenant. Tenants should make sure that their lease reflects the actual amount held as deposit before ownership changes.

▲ MOVING OUT

Within three weeks of the tenant vacating the unit, the landlord must return the full deposit to the tenant, or give the tenant a written itemized statement of the amount of security held and an accounting of the basis for keeping any of the deposit. A provision in a rental agreement or lease that characterizes a deposit as non-refundable is not enforceable. Landlords and tenants are encouraged to do a "walk through" of the unit after the tenant has vacated and cleaned, but before returning the keys, to prevent any disputes over the return of the deposit. This allows the landlord to let the tenant know whether or not they intend to use the deposit to do any cleaning or to repair any damages that the tenant might be able to otherwise remedy in order to have the full deposit refunded. If a walk through is not possible, tenants are encouraged to repair any damage that is beyond reasonable wear and tear, to clean the unit, to take photographs of the vacated unit or have witnesses who can attest to the condition of the unit after vacating.

▲ SMALL CLAIMS COURT

If the landlord does not return the deposit without explanation or the tenant disputes the accounting of the deposit or expenses, the tenant may bring an action in small claims court to recover the deposit if the deposit is under $5,000.00. If the landlord withholds the deposit in bad faith, meaning without any justifiable excuse, the landlord may also be liable for punitive damages up to $600.00 above and beyond the amount of the deposit.

INTEREST ON DEPOSITS

Beginning September 1, 1983, owners of San Francisco rental property have been required to pay 5% simple interest **EACH** year on any deposit held for at least one year. At the landlord's option, the payment may either be made directly to the tenant or by allowing the tenant to deduct the amount of interest due from their rental payment. This requirement to pay interest on security deposits is not covered by the Rent Ordinance and we therefore cannot give advice on this matter. What we can tell you is that Chapter 49 of the San Francisco Administrative Code addresses this issue. Chapter 49, which is separate from the San Francisco Rent Ordinance (Chapter 37), applies to all residential rental units in San Francisco, including those exempt from the Rent Ordinance, except for subsidized units. The amount is 5% simple interest and is pro-rated for any portion of a year after the tenant has been in residence for at least 12 continuous months. Tenants who move before a full year's occupancy are **not**, **however**, entitled to an interest payment.

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FACT SHEET NUMBER 4

EVICTION ISSUES

By the
Residential Rent Stabilization
and
Arbitration Board

November 1995

FACT SHEET NO. 4, EVICTION ISSUES

The following discussion pertains to those structures subject to the San Francisco Rent Ordinance. State law provisions govern entirely for those units exempt from the Ordinance. Exempt units include buildings built since 1979, and units whose rents are subsidized or controlled by a governmental agency (Section 8, for example).

In order to evict a tenant from a unit covered by the Rent Ordinance, a landlord must have a "just cause" reason which is the dominant motive for pursuing the eviction.

There are 13 just cause reasons. The most common are:

- Non-payment of rent;
- Habitual late payment of rent - this means more than once or twice, and the tenant has been warned that this is not acceptable to the landlord;
- Creating a nuisance and disturbing other tenants - the nature of the nuisance must be specifically stated on the notice;
- Owner-occupancy, or the occupancy of a member of the landlord's immediate family;
- To perform capital improvements which will make the unit uninhabitable while the work is being done - in which case the tenant must be allowed to reoccupy the unit once the work is completed. Verifiable moving expenses of up to $1,000 must be paid in the case of an eviction for capital improvements; moving expenses are not required for any of the other just cause eviction.

Owners should be very cautious and sure of their plans before asking a tenant to vacate a unit; we highly recommend that you seek the advice of an attorney experienced in this area of the law before attempting any evictions. **These requirements only apply to buildings that are under the jurisdiction of the Rent Ordinance.**

▲ OWNER-OCCUPANCY REQUIREMENTS

In order for an owner to evict a tenant to reside in a unit, the owner must have at least a 10% interest or a 25% interest in the property, depending upon when the owner took title. If title was held prior to

landlord must file a lawsuit known as an **unlawful detainer action** in order to remove the tenant from the rental unit. A copy of the Unlawful Detainer Summons and Complaint must be served on the tenant, after which the tenant has five days to file a response. The Court will set the case for a trial at which time the tenant can present his or her defense. If a response is not filed on time, the landlord may obtain a **default judgment**, which moves the process along much quicker. Only after this hearing, if the tenant loses, can the Court order that the tenant vacate the rental unit. If the Court orders the tenant to vacate, the Sheriff may then evict the tenant. **IT IS STRONGLY RECOMMENDED THAT THE TENANT OR LANDLORD SEEK LEGAL ASSISTANCE IN ANY EVICTION PROCEEDING. The Rent Board is prohibited from giving legal advice about any eviction.** We will advise the public only to the extent that the Rent Ordinance allows. Note that any action that may be taken by the Rent Board **DOES NOT** stall or prevent any court action that may be taken at the same time by either the tenant or the landlord.

The eviction process is a judicial, court-administered procedure that does not permit landlords to physically remove or lock out a tenant, cut off utilities such as water or power, or take the tenant's belongings in order to carry out the eviction. The landlord must use the courts. The eviction process can take from 3 weeks to over 6 months, depending on whether the landlord proceeds correctly; the tenant has a valid defense and exercises their rights in a timely fashion; and how backed up the court calendar is. The tenant is legally obligated to pay rent for the time they remain on the premises, although the landlord cannot collect rent after the date their notice says the tenant must vacate.

▲ PENALTIES

If a landlord uses unlawful methods to evict a tenant, the landlord may be subject to liability for any actual damages caused to the tenant, including mental or emotional distress. If a landlord seeks to recover, or found in violation of the Rent Ordinance, the landlord could be found guilty of a misdemeanor, and the tenant, or the Rent Board, may bring a civil action for an injunction or treble damages, and attorney fees. If the landlord is found guilty of a misdemeanor, he/she may be punished by a fine of not more than $2,000 or by imprisonment in the County jail for a period of not more than six months, or both. In the case of an actual or attempted wrongful eviction, the tenant may also file a civil suit for money damages.

February 21, 1991, then the owner is only required to have a minimum 10% interest. Anyone taking title after this date must have at least a 25% ownership interest in the property to evict for themselves or a member of their immediate family, such as a child, parent, grandparent, grandchild, sibling or the owner's spouse or spouses of such relations.

Any owner who recovers possession of a unit under these circumstances must have done so in good faith, without ulterior motive and with honest intent and MUST live in that unit for at least 12 continuous months. If a comparable unit is vacant or becomes vacant during the period of the notice terminating tenancy, then the notice must be rescinded.

Note that failure to move in or occupy for the full 12 month period shall create a rebuttable presumption that the landlord did not act in good faith. For more information on this section of the Ordinance, please refer to Section 37.9(a)(8).

▲ NOTICE REQUIREMENTS

If a landlord is seeking to evict a tenant, the Rent Ordinance mandates:

•A notice to vacate must be given to the tenant in writing and it must state the grounds under which possession is sought;

•**The notice must state that advice is available from the Residential Rent Stabilization and Arbitration Board. See Section 37.9(c) for this requirement**;

•**For owner-occupancy or relative evictions only, the notice must state**: (1) the identity and percentage of ownership of the owner to move in; or, (2) the identity and relationship of the relative to move in; and (3) the date the current percentage of ownership was recorded (Section 12.14 of the Rules and Regulations);

•A copy of all notices to vacate, and a copy of any additional written documents informing the tenant of the grounds under which possession is sought, shall be filed with the Rent Board within ten (10) days following service of the notice to vacate. Please note that there may be other state law requirements governing eviction notices that are not covered here. **Owners are advised to seek legal counsel in the preparation of a proper eviction notice**. Only 3-day notices to pay rent or quit do **NOT** have to be filed with the Rent Board. The Rent Board will, each month, select a random sample of 10% of all notices which state owner-occupancy as the reason for evic-

tion. This list will be transmitted to the District Attorney for possible investigation.

▲ EVICTION NOTICE PROCESS

If the landlord is seeking to evict a tenant and the tenant believes the eviction to be unlawful, he or she may file with the Board a form referred to as a Report of Alleged Wrongful Eviction. The Board will then send a notice acknowledging receipt of the report, summarizing the rights and responsibilities of landlords and tenants in eviction proceedings and outlining court proceedings. **Be advised that the filing of this report with the Rent Board does not prevent the landlord from pursuing an eviction through the Courts. Tenants should talk to an attorney.**

Once a tenant has filed a Report of Alleged Wrongful Eviction, the Rent Board staff will conduct an investigation to determine if there is evidence of any of the following: (1) the landlord is evicting more than one tenant at approximately the same time; (2) the eviction may be in retaliation for a dispute arising from a tenant's exercise of his or her rights under the Ordinance; (3) a dispute over the proper interpretation of the Ordinance is involved; (4) after a tenant has been required to vacate a rental unit, it appears that the eviction was effected by fraud or in bad faith; or, (5) a policy issue of city-wide importance is raised.

Once the investigation is concluded, the Rent Board may do the following:

1. If the department finds that there is no evidence of an unlawful eviction attempt, the tenant and other parties shall be so informed. [See Rules and Regulations Section 12.11 (b)]; or,

2. Set the matter for an investigatory hearing before a hearing officer of the Board. A notice of the hearing will be sent to the complainant, the landlord and other interested parties.

3. Where the hearing officer finds an eviction or attempted eviction to be in violation of the Ordinance, the Commission may decide whether or not to commence legal action against the landlord including referral to the District Attorney.[Rules and Regulations Section 12.13]

4. If the parties have reached an agreement, the Board may continue to monitor the case or close it.

▲ COURT PROCESS

If a landlord is seeking to evict a tenant, he or she must give a written notice. If the tenant does not voluntarily move out at the end of the notice period, the

▲ MASTER TENANT AND LANDLORD ROOMMATES

A tenant acting in the capacity of a landlord who resides in the same rental unit with his or her tenant may be able to evict said tenant without just cause as required under subsection 37.9(a). This means that if a roommate pays rent to another roommate, and has no relationship with the actual owner of the property, then the roommate who collects the rent doesn't need a reason to evict their roommate. This also applies to owners who take roommates in their own unit. In both cases, it must be clear that a "roommate" situation exists, i.e., that all or most of the rights and responsibilities are equally shared. Depending on the individual facts of a case, some relationships are more like a boarding house arrangement than true roommate relationship situation, in which case the tenant could not be evicted without just cause. In any event, all evictions at a minimum require a written eviction notice stating that advice regarding the notice to vacate is available form the Rent Board. (See Section 37.9(c) of the Rent Ordinance) Please be advised that tenants acting in the capacity of a landlord must still adhere to the judicial, court-administered procedures of the State of California in order to evict a tenant.

Caution: A tenant who subleases his or her rental unit may charge no more rent upon initial occupancy of the subtenants than that rent which the tenant is currently paying to the landlord.

THIS INFORMATION IS SUBJECT TO CHANGE WITHOUT NOTICE. 11/95

HOW TO FIND US

ADDRESS:
SAN FRANCISCO RENT BOARD
25 VAN NESS AVE. (AT MARKET ST.)
SUITE 320
SAN FRANCISCO, CA 94102-6033

OFFICE HOURS:
8 A.M. TO 5 P.M. MONDAY-FRIDAY

24-HOUR INFORMATION LINE.....252.4600

PHONE COUNSELING HOURS:
9 A.M. TO 12 NOON AND 1-4 P.M. MON.-FRI.

PHONE COUNSELING NUMBER.....252.4600

FAX NUMBER.....252.4699

ADMINISTRATIVE OFFICES ONLY.....252.4601

11/95

City and County of San Francisco

Rent Board

FACT SHEET NUMBER 5

TIPS FOR PREPARING A LANDLORD PETITION

By the
Residential Rent Stabilization
and
Arbitration Board

December 1996

FACT SHEET NO. 5, TIPS FOR PREPARING A LANDLORD PETITION

A. OPERATING AND MAINTENANCE PETITIONS (O & Ms)

- **When an O & M passthrough can be imposed.** O & M passthroughs can only be imposed on the tenant's anniversary date, so be sure to plan accordingly and file well ahead! O & Ms become part of the tenant's base rent, so they must coincide with the anniversary date.
- **Select two consecutive twelve-month periods for comparison of operating and maintenance costs.** You may either use the two immediately preceding calendar years or any recent two-year period (twenty-four months), provided that the two-year period is not selected in order to create "exaggerated results."
- **Make a separate file for each twelve-month period.** The first twelve-month period is referred to as "Year 1" and the second twelve-month period is referred to as "Year 2." Clearly mark each file as Year 1 or Year 2.
- **Within each file, make a separate section for each category of operating and maintenance expense.** Clearly mark each section with the name of the category. Typical operating and maintenance categories include: water/sewer, garbage, debt service, property taxes, insurance, management, business license/fees, elevator service, repairs, maintenance and security. Rent Board fees, capital improvements, vacant unit preparation costs and legal fees are not considered part of a landlord's routine operating and maintenance costs.
- **Within each section, include proof of cost and proof of payment for each claimed expense in that category.** Proof of cost can be documented by a bill, invoice, contract, receipt, statement, etc.. Proof of payment is best documented with a copy of a cancelled check.

and can be identified as pertaining to a particular property. Likewise, make payments for each property separately so that cancelled checks pertain to one property only.

- **Ask the contractor or service provider to clearly describe the exact nature of the work or service provided and to clearly identify the location of the property where the work or service is performed.** Additionally, an itemization of costs for multiple improvements, repairs or services listed on a single bill, contract, invoice, etc. should be provided. This is particularly helpful if the expenses are challenged.
- **At the time that checks are prepared, make a notation on the memo line to identify the expense.** For example, write "exterior painting - 25 Van Ness." Or, identify the invoice number which corresponds with the payment.
- **Keep your records organized and accessible.** It will be easier to compile the documentation required by the Rent Board. While the work and charges might be clear to you at the time of the work, they get less so as time passes. Remember, even though all this may be familiar to you, it is not familiar to our staff. Well organized documents and lucid explanations will facilitate approval of your petition.
- **Make all payments by check or credit card.** Cash payments are difficult to document.
- **At the time of purchase of a property, require documentation of capital improvement costs and operating and maintenance expenses as a condition of closing escrow if you are anticipating filing a petition.** It is often difficult to obtain these records from the prior owner after the transaction is completed.

IF YOU HAVE QUESTIONS, STAFF IS AVAILABLE TO HELP YOU WITH YOUR PETITION.

THIS INFORMATION IS SUBJECT TO CHANGE WITHOUT NOTICE. PLEASE CALL OUR OFFICE IF YOU HAVE ANY QUESTIONS.

SHORTCUT: Some regular or periodic bills, such as water/sewer and garbage bills, reflect payment of the prior bill. Submission of such bills which cover the entire period when the services were provided are acceptable as proof of payment. Cancelled checks would not be required. On the other hand, a handwritten "Paid in Full" notation on an invoice generally is not considered adequate proof of payment. A cancelled check would be required to prove payment in such circumstances.

- **Organize your documents in chronological order, with the earliest document first.** Then move on to the next billing period and do the same. For example, provide a copy of the mortgage statement for January and attach a copy of the cancelled check reflecting January payment if the shortcut discussed above does not apply. Follow this with a copy of the mortgage statement for February and the cancelled check for February payment. And so on.
- **Provide a written explanation of any unusual or extraordinary costs or transactions and attach it to the front of the section for that category.** Likewise, provide a written explanation for any documentation which is missing, incomplete or difficult to understand. It is also helpful to attach to the front of each section the calculator tape listing all of the claimed costs for that category.

B. CAPITAL IMPROVEMENT PETITIONS

- **When a Capital Improvement passthrough can be imposed.**
  A capital improvement can be imposed at any time–they do not need to coincide with an anniversary date. Capital improvement passthroughs are removed once the cost has been fully amortized or if the tenant(s) move(s).
- **Expedited Hearings**
  Would you like to get your capital improvement petition certified in days instead of months? Your petition may qualify for an expedited hearing - see page 3 of the petition form. Try it -it works!

- **For each capital improvement completed within the past five years, provide proof of cost AND proof of payment.** Proof of cost can be documented by a bill, invoice, contract, receipt, statement, etc.. Proof of payment is best documented with a copy of a cancelled check.

SHORTCUT: Did you know that a check is cancelled on the front as well as the back? The dollar amount of the check is printed by the bank in the lower right corner of the face of the check to show that the check has been paid. Therefore, a copy of the front of the check is sufficient to show proof of payment.

- **Organize your documents in the order in which the capital improvements are listed on the petition.** For each capital improvement listed on the petition, include a copy of the bill, invoice, contract, etc., with the proof of payment attached. For example, if the first two capital improvements listed on the petition are a new roof and exterior painting, include a copy of the contract for a new roof, with a copy of the cancelled check to AAA Roofing Co. attached. Next, include a copy of the invoice for exterior painting, with a copy of the cancelled check to BBB Painting Co. attached. And so on. Where a single check proves payment for more than one capital improvement, a separate copy of the check should be attached to the contract, etc. for each of the improvements.

Capital improvements should be listed on the petition in chronological order, with the earliest improvement first. It is also helpful to list all seven-year improvements together followed by all ten-year improvements. Remember, keep them in chronological order.

C. OTHER HELPFUL HINTS

- **For owners or managers of more than one property, get separate bills, invoices, contracts, receipts, statements, etc. for each expense at each property.** Alternatively, make sure that the costs attributable to separate properties are kept separate

"FAX FACTS" 252.4660 THE NEW RENT BOARD 24-HOUR FAX BACK SERVICE

Do you need a copy of an Ordinance section at 10 p.m.? Or maybe you want the 24-hour "*Information to Go*" menu listing so you can go right to the topics you want to hear. You can have this, brochures, forms and much more now with "***Fax Facts***," our new 24-hour fax back system. Call **252.4660** and you can either obtain the Main Menu listing of all the available documents or, if you already have the Main Menu listing, simply enter the three-digit number for the document you want. Punch in the document I.D. number, your fax number, and it is automatically faxed to your machine. Try it!

24-HOUR *"INFORMATION TO GO"* LINE AT 252.4600

The Rent Board has a 24-hour information line available to answer over 65 of the most frequently asked questions. You can also:

- fax the text you hear to your fax machine instantly;
- be connected to a counselor during counseling hours (9-Noon & 1-4 P.M.);
- choose to transfer to the "***Fax Facts***" service.

WE ARE NOW ON THE INTERNET!

You can now have access to most of the documents we publish through the Internet. This means that you can review and print at your printer copies of the Ordinance, Rules and Regulations, Fact Sheets such as this one, the text of our "***24-hour Information to Go***" line, as well as our Commission agendas and minutes. There are no Rent Board charges for these copies, either. Our Internet address on the World Wide Web is:

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Look us up!

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FAX NUMBER.....252.4699
ADMINISTRATIVE OFFICES ONLY.....252.4601

12/96

City and County of San Francisco

Rent Board

FACT SHEET NUMBER 6

TENANT PETITION PREPARATION TIPS

By the
Residential Rent Stabilization
and
Arbitration Board

January 1996

FACT SHEET NO. 6, TIPS FOR PREPARING A TENANT PETITION

Complete the petition form(s) fully and accurately.

- Are there sufficient mailing addresses and telephone numbers for the tenant, the landlord and/or the manager? (Include FAX numbers if available.)

- Is the petition signed and dated?

- If there are any roommates who wish to be included in the action, **each** roommate must either sign the tenant's petition and be listed as a co-petitioner or file a separate petition and request consolidation with the tenant's petition.

- Are all past rent increases (since April 1981) provided, including the amount of the current rent? List the actual dollar amount of the new rent rather than the percentage increase amount. Also provide the month, day and year of each prior rent increase.

- Have **copies**—NOT the originals—of any supporting documents and/or photographs been provided? Originals should be brought to the hearing for inspection, but should not be given to the Rent Board for the file. (The Rent Board cannot remove evidence from the file and return it to you.)

- In addition to the *Tenant Petition for Arbitration* form, is the correct form (i.e., *Decrease in Services Statement* and/or *Failure to Repair Statement*) completely filled out and attached to the petition?

Processing of tenant petitions is often delayed because incomplete information is provided on the petition and/or supporting documentation is not submitted in a timely manner. You can help speed up the process considerably by making sure to address all of the points listed here.

For Petitions based on Decreased Housing Services Claims:

- Is each decreased housing service listed clearly and separately?
- Is the **monthly** value of the housing service, in dollars or as a percentage of rent, provided for each separate claim? The Rent Board staff **cannot** do this for you.
- Is supporting documentation for each decreased housing service attached to the petition? Proof could be a Notice of Violation from the Department of Building Inspection, copies of letters to the landlord, photographs, etc.
- For each separate claim, are dates provided which indicate when the housing service was decreased or not provided and when the service was restored, if it was restored?
- **NOTE**: No rent reductions will be granted for more than one year before the date the petition was filed **unless** the tenant can **prove** that the landlord had prior notice of the decreased housing service.

For Petitions based on the Landlord's Failure to Repair and Maintain:

- Is the petition being filed within 60 days of the tenant receiving a rent increase notice? **If it has been more than 60 days, the petition cannot be filed.**
- Is the rent increase notice included with the petition?
- Is a notice of violation from the Department of Building Inspection, Department of Public Health or a similar agency included with the petition? If not, is there other proof that the landlord's failure to repair or maintain is a violation of state or local law?
- When and how was the landlord notified of the repair or maintenance problem(s)? Provide copies of letters to the landlord, photographs, etc. with the petition.
- **NOTE**: A successful failure to repair claim can ONLY prevent the proposed rent increase from taking effect until repairs are made -- it does **not** decrease the rent.

Tenant petitions may be based on a single claim or on a number of different claims. Whether it is a simple case or a complex case, all documentation supporting the petition should be relevant to the stated claims, clearly organized and labeled to assist the Rent Board staff in reviewing, processing, hearing and deciding your case.

For Petitions based on Unlawful Rent Increases:

- What are the exact dates and amounts of each rent increase for the tenancy since April 1, 1981? (The Rent Board has no authority to adjust excessive rent increases which were imposed prior to April 1, 1982.)

- Are all of the rent increase notices and copies of canceled rent checks or rent receipts attached to the petition?

- Are any of the rent increases for capital improvements? Additional occupants? Additional housing services like storage or parking? PG&E?

- Is this a complaint about a Gas and Electricity passthrough overcharge? Have you included a copy of the landlord's calculation? Is the alleged Gas and Electricity overcharge older than one year? If so, the petition cannot be filed.

After the Petition is filed, an Arbitration Hearing is Scheduled.

- Hearings are generally scheduled within 60 days after the petition is filed.

- Notice of the hearing is mailed to all parties at least 10 days before the hearing. Hearings are scheduled Monday-Friday at 9:00 AM, 11:00 AM and 2:00 PM.

- Postponement of the hearing may be granted for good cause at the written request of the landlord or the tenant. Mere inconvenience or difficulty in appearing does not constitute good cause.

Be Prepared for the Hearing.

- **Arrive promptly and be ready to proceed.**

The tenant or an authorized representative of the tenant must personally appear at the hearing to present the tenant's case. If the tenant or authorized representative fails to appear at the hearing, the petition will be dismissed with prejudice, which means that you will not be permitted to file another petition on this same issue.

- **A tenant can represent him/herself at the hearing**. It is not necessary to bring a lawyer, though it is acceptable. If it is necessary to have an interpreter for a party or witness, it is the responsibility of the party to provide the interpreter.

- **The burden of proof is on the tenant to prove his/her case**. Therefore, at the hearing, the tenant will present his/her evidence first. Then the landlord will have a chance to examine the evidence, to question or cross-examine the tenant and his/her witnesses, and to respond to the tenant's allegations. The tenant will then have a chance to examine the landlord's evidence, to question or cross-examine the landlord and his/her witnesses, and to rebut the landlord's response. After all the evidence is presented, each party will have the opportunity to give a closing argument.

If the landlord and tenant reach an agreement before the hearing date which settles the issues raised in the tenant's petition, **the tenant must file a written withdrawal of the petition with the Rent Board before the hearing date**. If the tenant does not withdraw the petition and fails to appear at the hearing because an agreement was reached, the petition will be **dismissed with prejudice**. The dismissal may adversely affect the tenant's right to make claims against the landlord in the future.

- The formal rules of evidence do not apply at Rent Board hearings. However, **all evidence and testimony must be *relevant* to the issues raised in the tenant's petition**. Evidence may include testimony, photographs, written notices, letters, official citations/notices, leases, etc. Non-party witnesses will be permitted to testify and may be cross-examined by the other party.

- **Due to the limited amount of hearing time (2 hours in most cases), testimony should be to the point and as brief as possible**. Testimony may be presented in a narrative form, or in a question and answer format. The Hearing Officer will probably ask some questions in order to get enough evidence on which to base a decision.

- **Make a list of dates or chronology of events *before* you get to the hearing**. Do not waste time at the hearing trying to remember dates or information. Have all relevant information on hand prior to the hearing.

- **Organize documentary evidence *prior* to the hearing to avoid spending time at the hearing searching for relevant documents**. Documents should be tabbed to coincide with the chronology. Bring ***two additional*** copies of each relevant document or photograph—one for the Hearing Officer and one for the landlord.

- **All Rent Board hearings on tenant petitions are tape recorded**. Remember to speak clearly and audibly. Do not interrupt when someone else is speaking.

At Hearings on Decreased Housing Services Claims:

The tenant must present his/her testimony and other evidence with regard to each decreased housing service claim as follows:

- A detailed description of the housing service/problem;

- The date the housing service was reduced or eliminated;

- All notices to the landlord of the problem or service decrease. If written, bring sufficient copies to the hearing for the Hearing Officer and the landlord;

- Whether and when the problem has been partially or fully corrected, or the decrease in service has been partially or fully restored;

- How the problem or decrease in service affects/affected the value of the tenancy, and/or

why the tenant considers the decrease or problem to be **substantial**. Justify/explain the amount of the requested rent reduction.

Consider the Mediation Alternative: Prior to or during the hearing, the Hearing Officer may offer to help the tenant and landlord try to resolve the tenant's claims through an informal negotiation process called **mediation.** The hearing officer is a trained mediator and will skillfully guide the parties toward a voluntary resolution of the case before the conclusion of the hearing. Some of the benefits of mediation include: an immediate resolution of the case, eliminating the 6-12 week wait for a decision from the Hearing Officer; control by the parties over the outcome of the case; and, improved tenant/landlord relationship. If the mediation process fails to produce an agreement, the tenant still has the right to a full arbitration hearing and a decision by a Hearing Officer.

At Hearings on Failure to Repair and Maintain Petitions:

The tenant must prove the following facts:

- The tenant received a notice of rent increase within 60 days before the date the petition was filed. If written, bring sufficient copies to the hearing for the Hearing Officer and the landlord;

- The tenant requested the landlord to perform repair(s) or maintenance work prior to the date the increase went into effect. If written, bring sufficient copies of all requests to the hearing for the Hearing Officer and the landlord;

- The landlord failed to perform the requested repair(s) or maintenance work as of the date the rent increase went into effect. If the repair(s) or maintenance work have been performed by the date of the hearing, provide the date(s) such work was completed;

- The requested repair(s) or maintenance work constitutes a violation of state or local law. If there are official citations for code violations, bring sufficient copies to the hearing for the Hearing Officer and the landlord.

TRY OUR 24-HOUR "*INFORMATION TO GO*" LINE AT 252.4600

The Rent Board has a 24-hour information line available to answer over 65 of the most frequently asked questions. It is revised as changes to the law occur so that you can stay up-to-date with the Ordinance. If you do not hear the information you need, you can be connected to a counselor during counseling hours (9 A.M. to Noon and 1 P.M. to 4 P.M. Monday through Friday). We also have a voicemail line for you to leave your suggestions and constructive criticisms on, so please, let us hear from you. To access the voicemail suggestion line call our 24-hour number, 252.4600 and then push 1-9. You can request to be sent a handy guide of the menu topics that will facilitate your use of the system by leaving your name and address on this line.

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ADMINISTRATIVE OFFICES ONLY.....252.4601

1/96

City and County of San Francisco

Rent Board

FACT SHEET NUMBER 7

ANNUAL ALLOWABLE INCREASE AMOUNTS & HOW TO CALCULATE ANNUAL RENT INCREASES

By the

Residential Rent Stabilization

and

Arbitration Board

August 1997

FACT SHEET NO. 7, ANNUAL ALLOWABLE INCREASE AMOUNTS & HOW TO CALCULATE ANNUAL RENT INCREASES

NEW ALLOWABLE INCREASE FOR 1997-1998—1.8% & Capital Improvement Imputed Interest Rates

Effective March 1, 1997 through February 28, 1998 the allowable annual increase amount is 1.8%. This amount is based on 60% of the increase in the Consumer Price Index for All Urban Consumers in the Bay Area, which was 3.0% for the year ending November 1996.

For your information, the past allowable increase and the effective periods are provided below:

Effective Period	Amount of Increase
March 1, 1997 - February 28, 1998	1.8%
March 1, 1996 - February 28, 1997	1.0%
March 1, 1995 - February 29, 1996	1.1%
March 1, 1994 - February 28, 1995	1.3%
March 1, 1993 - February 28, 1994	1.9%
December 8, 1992 - February 28, 1993	1.6%*
March 1, 1992 - December 7, 1992	4%
March 1, 1991 - February 29, 1992	4%
March 1, 1990 - February 28, 1991	4%
March 1, 1989 - February 28, 1990	4%
March 1, 1988 - February 28, 1989	4%
March 1, 1987 - February 29, 1988	4%
March 1, 1986 - February 28, 1987	4%
March 1, 1985 - February 28, 1986	4%
March 1, 1984 - February 28, 1985	4%
March 1, 1983 - February 29, 1984	7%
April 1, 1982 - February 28, 1983	7%

*** Caution: This rate applies only to this period.**

Call our 24 hour info line, 252.4600 and press 1-1 to hear the new rate around each December 20th.

Capital Improvement Imputed Interest Rates in effect from 3/1/97 through 2/28/98 are as follows:

6.4% for 7 Year Amortized Improvements
6.5% for 10 Year Amortized Improvements

For more information on this topic, call our 24 hour info line at 252.4600 and select 5-0, Capital Improvements.

HOW TO CALCULATE RENT INCREASES

Because incorrect rent increases can result in very costly errors, it is important for owners to understand how to properly calculate rent increases. This section offers some examples of several different scenarios for giving rent increases. Using the definitions and the rules that follow, one should be able to determine how to properly calculate a rent increase. These is not a comprehensive document, so if you have any questions about this document, its contents or how to calculate a rent increase, please speak with a counselor by calling 252.4602.

Definitions necessary for understanding and using this document:

Anniversary Date—the date on which the tenant's current rent became effective. This is the date that the tenant either, A) moved in and there has been no rent increase given since the tenant

moved in, or B) the date of the last rent increase. Note that the owner can change or "shift" the anniversary date provided that it has been at least 12 months since the last allowable increase. See Examples No. 1 & 4 for shifting anniversary dates. Anniversary dates for Proposition I units are calculated differently. See Examples 6, 7 & 8 for more information on Proposition I units.

Banked Increases—all or a portion of past annual allowable increases that have not been imposed can be accumulated or "banked" for imposition on or after a later anniversary date. When no increase is imposed on the tenant's anniversary date, that increase is considered "banked" when it has been at least 24 full months from the last annual increase or initial occupancy. When a portion of an annual allowable increase has been imposed on the tenant's anniversary date, the remaining portion is banked and may be imposed after 12 full months have elapsed. See Examples 2, 3, 4 & 5 for different scenarios of banked increases.

Rules for giving rent increases:

- Owners must give the notice of increase in writing at least 30 days prior to the effective date.
- Rent increases cannot be "rounded up" to the nearest dollar.
- Rent increases can only be given after 12 or more months have elapsed from the date of the rental agreement or the date of the last rent increase. (The only exception to this is a capital improvement passthrough which has been petitioned for and approved by the Rent Board—Operating and Maintenance (O &M) expense increases must coincide with the anniversary date).
- Anniversary dates can be changed as long as it has been at least 12 months since the last annual increase took effect.
- When giving an annual increase, and it has been more than 1 year but less than 2 years since the last increase was given, ***the new increase is not considered a "banked" increase and an owner is only entitled to the annual increase amount in effect at the time the notice of rent increase takes effect***. An increase is considered "banked" only if at least a full 24 months has elapsed since the last increase was given or the initial rent was set.
- The amount of the annual allowable increase changes every March 1st. ***If an annual increase is imposed, the amount in effect at the time the increase takes effect is the increase amount that can be imposed.*** For example, if the anniversary date was prior to March 1st and the allowable amount then was higher, and the owner gives the increase after March 1st, then s/he is only entitled to the lower amount in effect as of March 1st. Likewise, if the amount in effect goes up after March 1st, the landlord is entitled to impose the higher amount.
- Rules and Regulations Section 4.12(b) requires that: (1) any rent increase notice explain the portions of the increase attributable to banking; and, (2) the dates upon which said banking is based. Failure to provide this information in the notice will not make the increase null and void, however.

EXAMPLE NO. 1, SHIFTING ANNIVERSARY DATES

FACTS: The tenant moved in on February 1, 1994. The permitted increases since then were:

March 1, 1994 through February 28, 1995 was 1.3%.
March 1, 1995 through February 28, 1996 was 1.1%.

The landlord forgot to give a notice of rent increase in time for February 1, 1995, the tenant's anniversary date, and instead gave a 30-day notice on March 1, 1995 to impose a 1.3% increase as of

April 1st. Is this increase amount correct?

NO, the correct amount is 1.1%. The landlord did not "bank" the higher amount, because the banking provisions of Rules and Regulations Section 4.12 state that ***12 months must have elapsed from the time the rent increase before and increase is banked.*** In this case, only 2 months have elapsed since the increase could have been given (Feb. 1, 1995). For banking to be applicable, the next increase could not be given until February 1996, or 24 months since the last increase, or as in this case, since the tenant moved in. Because the owner did not wait, he could only give a notice for a 1.1% increase, ***because an owner can only impose the annual allowable amount in effect on the date of the rent increase.*** This is the most common mistake that owners make. By shifting the anniversary date to April 1, 1995, four things have happened: (1) the owner has lost the right to the 1.3% amount; (2) the owner lost the increase for the months of February and March; (3) the anniversary date for future increases has now been shifted from February to April; and (4) the owner cannot bank the 1.3% increase. See the following example as to how the owner could have banked the 1.3%.

EXAMPLE NO. 2, GIVING A BANKED INCREASE OF ONE YEAR AND RETAINING THE SAME ANNIVERSARY DATE

Using the above example how could the owner preserve the right to both the 1.1% increase and the 1.3% and not lose the increase for Feb. and Mar.? As shown in Example No. 1, a landlord cannot "pro-rate" for the months that have elapsed since an increase could have been given. S/he must wait a full 12 months (until Feb. 1996) in order for banking to become available. In Example No. 1, the landlord could have "banked" the 1.3% from February 1, 1995 by waiting until February 1, 1996, at which time s/he could have imposed a 2.4% increase (1.3% banked from 1995 plus 1.1% from 1996). Banking an increase as done in this example will keep the same month (Feb.) as the anniversary date, which simplifies the calculations and helps prevent costly repayments due to errors.

For more information on banked increases, refer to Ordinance Section 37.3(a)(2), the Rules and Regulations Section 4.12 and Menu Item #13 on the "Info to Go" 24-hour line at 252.4600. Copies of these sections and scripts are available via the fax back system, Fax Facts. Call 252.4660 and enter document numbers 113, 203 and 244.

EXAMPLE NO. 3, BANKED INCREASES FOR MULTIPLE YEARS WITH SAME ANNIVERSARY DATE

FACTS: The tenant moved into the unit in June 1987 at a base rent of $1,000. The base rent is now $1,040 per month (there was an increase of 4% given in 1989). The owner has BANKED increases totaling 21.3%, which are calculated as follows:

4% for 1988;
4% for 1990 (the landlord already gave 4% for 1989);
4% for 1991;
4% for 1992;
1.9% for 1993;
1.3% for 1994;
1.1% for 1995; and
1% for 1996.

21.3% Banked Increases
+1.8% 1997 Annual Allowable Increase
23.1 % Total Possible Increase as of June 1997

It is now April, 1997 and the owner has given a rent increase notice to take effect in June 1997. How much of a rent increase is the owner entitled to as of June 1997?

As you can see, the owner is entitled to a banked increase amount of 21.3%. The owner is also entitled to a 1.8% increase for 1997,

bringing the total allowable amount to a straight (not compounded) 23.1%. To arrive at the dollar amount of the new rent, simply multiply 23.1% (.231) times the base rent of $1,040, for an allowable increase of $240.24. This would bring the new base rent to $1,280.24.

Note: The 1.6% increase for the period from 12/8/92 through 2/28/93 is not included here because the anniversary date in this example did not fall during this period. It is NOT an extra increase. DO NOT use this amount in any calculation of banked increases unless the anniversary date occurs during this period.

REMEMBER, You cannot compound the increases—You must total the entire banked amount first before multiplying. **Also, Do not round up**—it is not permitted.

EXAMPLE NO. 4, BANKED INCREASES FOR MULTIPLE YEARS WITH SHIFTING ANNIVERSARY DATE

FACTS: They are basically the same as in Example No. 3, with one exception as noted below. The tenant moved into the unit in June 1987, at a rent of $1,000 per month. There has only been one 4% increase in June of 1989, bringing the base rent to $1,040. However, in this example, the owner decided to impose the banked and annual increases in December 1996. The increase permitted in Dec. 1996 is 1%.

Current base rent of $1,040. The owner has BANKED increases totaling 20.3%, which are calculated as follows:

4% for 1988;
4% for 1990 (the landlord already gave 4% for 1989);
4% for 1991;
4% for 1992;
1.9% for 1993;
1.3% for 1994; and
1.1% for 1995
20.3% Banked Increase
+1% 1996 Annual Allowable Increase
21.3% Total Possible Increase as of December 1996

How much of a rent increase is the owner entitled to as of December 1996?
A new monthly rent of $1,261.52 (21.3% X $1,040) could be imposed, which includes a 20.3% banked amount plus the current annual allowable amount of 1%. In this example, the owner has:(1) lost the rent increase for the months from June 1996 (anniversary date) through Nov. 1996 because the anniversary date was shifted to December; and (2) has shifted the new anniversary date for the next possible increase to December 1997.

EXAMPLE NO. 5, CALCULATING A PARTIAL BANKED INCREASE

FACTS: Using the facts as in Example No. 3, there is a current base rent of $1,040 per month and the owner has BANKED increases totaling 21.3%, which is calculated as follows:

4% for 1988;
4% for 1990 (the landlord already gave 4% for 1989);
4% for 1991;
4% for 1992;
1.9% for 1993;
1.3% for 1994;
1.1% for 1995; and
1% for 1996.
21.3% Banked Increases
+1.8% 1997 Annual Allowable Increase
23.1 % Total Possible Increase as of June 1997

Using the same figures from Example No. 3, the owner wants to impose 10% of the total increase amount and reserve the balance for

future years. What is the increase amount?

Banked amounts do not have to be used all at the same time, and there is no limit on the amount that can be accumulated nor time limitation on when these amounts must be imposed (an owner doesn't "use it or lose it"). The owner decided to give only 10% of the banked increase calculated on the base rent of $1,040, or $104 per month. This would leave a banked remainder of 13.1% that could be imposed in part or in full on future anniversary dates. Note that the 1997 1.8% allowable increase will become a banked amount as of June 1998. Because it is easier to calculate, we recommend that any banked increase be based on a percentage amount rather than a dollar amount. However, it is possible to impose a dollar amount. For example, if the owner in the above example wanted to give a $150 increase, that would equal 15% ($150 divided by $1,000), leaving 8.1% banked. We recommend that any amounts remaining for possible imposition in the future also be enumerated in the notice of rent increase. This puts the tenant on notice and also serves as a record as to what was given and/or left over in the prior year.

EXAMPLE Nos.. 6, 7 & 8
RENT INCREASE INFORMATION FOR PROPOSITION I AFFECTED UNITS ONLY
Proposition I (as in "eye") repealed owner occupied exemptions from the Rent Ordinance for buildings of 4 units or less and became effective on December, 22, 1994.

Definitions for Proposition I Affected Units
A Proposition I Affected Unit—a Newly Covered Unit (one that became subject to the Rent Ordinance on Dec. 22, 1994 as a result of the passage of Proposition I—see Rules Section 1.15), as well as a unit that would have been subject to the Rent Ordinance on Dec. 22, 1994, regardless of the passage of Proposition I (See Rules Section 1.16).

Proposition I Anniversary Date—the date that the tenancy began OR the date of the last lawful rent increase that was imposed on or before May 1, 1994, which ever occurred later. This means that if there was a rent increase during the "Transition Period" (May 1, 1994 through December 21, 1994) which is null and void pursuant to the "rollback" provisions of Proposition I, one looks to the last lawful increase that was given prior to that time for purposes of determining when an annual allowable increase could have first been given (even if the last rent increase took effect during the period prior to Rent Board jurisdiction).

EXAMPLE NO. 6, RENT INCREASES GIVEN DURING THE TRANSITION PERIOD, MAY 1, 1994-DECEMBER 22, 1994
FACTS: The tenant moved in on June 1, 1993 at a rent of $500. The owner gave a rent increase of $25 on Aug. 1, 1994, for a new rent of $525. What is the correct rent?

In this example, the correct rent is $500. The increase was given during the "Transition Period" and is incorrect and the base rent reverts to $500, with the $25 overcharge being owed to the tenant for the months that it was paid. In this example, the first allowable increase date would be December 22, 1994. A 1.3% increase could have been given to take effect on or after that date. Had the owner in this case given the notice to be effective after March 1, 1995, then the owner would have been entitled to the new amount that is determined each March—in this case, 1.1%. ***Remember, you must give the annual increase amount in effect at the time the notice takes effect***. In this example, there would be no banked amount due the owner. See Example No. 8 for Banked Increases under Proposition I.

EXAMPLE NO. 7, RENT INCREASES GIVEN PRIOR TO THE TRANSITION PERIOD, MAY 1, 1994-DECEMBER 21, 1994

FACTS: The tenant moved in on April 1, 1993. The rent was $1,000. On April 1, 1994, the rent was increased to $1,150. What is the correct rent and what rent increase can be given next and when?

The new rent as of April 1994—$1,150 is legal, since it was imposed prior to May 1, 1994, the transition period. The next possible rent increase would be 12 months later—April 1995—when the annual increase amount was 1.1%.

Generally, any increase that took effect prior to May 1, 1994 is permissible.

EXAMPLE NO. 8, BANKED INCREASES UNDER PROPOSITION I

Proposition I landlords are not entitled to banked increases for the period of time before they came under Rent Board jurisdiction. For Newly Covered Units or Proposition I Affected Units where there had not been a rent increase for at least a year prior to December 22, 1994, the first rent increase amount the landlord is entitled to is the 1.3% that was in effect on Dec. 22, 1994. This amount became banked on December 22, 1995 if no rent increases were imposed between Dec. 22, 1994 and Dec. 22, 1995.

FACTS: The tenant moved in on August 1, 1992 at a rent of $1,000. The owner wishes to give an increase to be effective in June 97. There have been no intervening increases since the tenant moved in. Base rent—$1,000

Dec. 22, 1994	1.3% **(Banked Increase)** This amount is the first allowable increase since there had been no increase for at least the 12 previous months, hence this is the anniversary date for this unit
Dec. 22, 1995	1.1% **(Banked Increase)**
June 1, 1997	1.8% (Annual Allowable increase permitted as of June 1, 1997
June 1, 1997	**4.2% Total Possible Increase as of June 1997**

How was the 4.2% amount arrived at?

Because no rent increase was given in the 12 months prior to the Proposition I effective date of Dec. 22, 1994, Dec. 22, 1994 becomes the anniversary date for this unit. Note that there is no banking for the Dec. 22, 1996 annual increase amount in effect (1.0%) since the owner skipped the anniversary date of December 22, 1996 and gave an annual increase in June 1997, which is less than 12 months from the date that an annual rent increase could have been given [Section 4.12 of the Rules and Regulations]. The owner shifted the anniversary date for increases from December to June and lost the increase amount for this period. The annual increase in effect is 1.8% on June 1, 1997.

Rent Increases Permitted Based on the Past Rent History of Proposition I Affected Units

The Commission established a procedure for larger increases for Proposition I owners if there was a long period of no increases prior to the imposition of Proposition I. However, these amounts must be petitioned for on the Landlord Proposition I petition form. Owners who did not give any increases between May 2, 1989 and May 1, 1994, could be entitled to as much as 15.2%. Please refer to Menu #92 in the Info to Go line—252.4600 for more information. For a fax version of Menu #92, call 252.4660, enter #192 and your fax number and it will be sent immediately.

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25 VAN NESS AVE. (AT MARKET ST.)
SUITE 320
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12/96

City and County of San Francisco

Rent Board

FACT SHEET NUMBER 8

MEDIATION

By the
Residential Rent Stabilization
and
Arbitration Board

March 1997

FACT SHEET NO. 8, RENT BOARD MEDIATION PROGRAM

The Rent Board adopted new regulations in the fall of 1996 to make mediation a permanent program of the Rent Board. Rules and Regulations Sections 11.15, 11.20 and 11.21 were amended to implement the Rent Board's Mediation Program.

The Rent Board Mediation Program runs simultaneously with our arbitration service. Under the Mediation Program, most tenant petitions based on decreased housing services and/or failure to repair and maintain are scheduled for a mediation session instead of an arbitration hearing. It has been the Rent Board's experience that these types of cases are the most suitable for resolution through the mediation process.

1. WHAT IS MEDIATION?

Mediation is a process whereby a third party neutral, a mediator, meets with people who are in conflict and helps them to reach a mutually satisfactory resolution. Unlike an arbitrator, a mediator does not make decisions for the participants. Instead, participants in a mediation make their own decisions, and decide for themselves how they would like to resolve their differences. The mediator acts as a guide, facilitating communication between the parties. The mediator also helps participants to analyze their options and to evaluate the risks, if any, associated with each option.

2. WHAT ARE THE BENEFITS OF MEDIATION?

Mediation is one of the fastest growing methods of dispute resolution, in part because of the benefits it offers. As noted above, a major feature of mediation is that it allows people with differences to make their own choices about how to resolve their conflict. This is almost always more satisfying to people, and it ensures that a high percentage of agreements will be

- agreements are enforceable in court
- if the mediation is not successful, it will be scheduled for arbitration within 30 days
- If the owner does not appear, the mediation will be held as an arbitration, so it is important to always be prepared for arbitration.
- Caucuses are held by the mediator with both parties
  - The mediator may meet with both parties independent of the other party in order to discuss the matters at hand. Discussions with each side are not shared by the mediator.

A Successful Mediation Means Immediate Results—You Have a Decision Today

When you have a successful mediation, you have an agreement when you leave. In an arbitration, the Hearing Officer must carefully consider the facts in the case, write the decision, have it reviewed and edited and finally issued—a process which can take months. And this does not include the appeals process. There is no appeal from a mediation agreement and there are no further proceedings once an agreement is reached.

While the actual mediation session can take a few hours, the resulting agreement is immediate and final. In most cases, you will leave the mediation with an agreement in hand. Participants can reduce the amount of time the process takes by being prepared for the mediation session. Before the mediation session, determine what you are willing to do and what it is you really want from the other party. It can be something as simple as improved communication or additional storage space. We have found that mediation can be the foundation for re-establishing a relationship that has broken down due to communication problems or even simple misunderstandings.

HOW TO ENSURE A SUCCESSFUL MEDIATION

- be prepared to identify your issues clearly and concisely
- know what outcomes you want as a resolution
- be flexible—other solutions may arise during the mediation that are equally desirable
- be willing to listen to what the others have to say

upheld. At the Rent Board, participants in a mediation can fashion their own agreements; this avoids the risk inherent in arbitration. Further, since the participants decide the result, the mediation ends on the same day and the participants have a resolution in hand, as opposed to waiting a number of months to receive an arbitration decision. A mediation agreement is a final resolution of the case and is legally binding on all parties - it cannot be appealed to the Rent Board Commission or the San Francisco Superior Court like an arbitration decision. Mediated agreements also have more flexibility than an arbitration decision; for example, an important benefit of mediation is that the participants can agree to certain repairs or replacements. In arbitration, the Hearing Officer has no power to order repairs. Unlike arbitration, mediation is a confidential process, in that the proceeding is not tape recorded. Mediation is more informal than arbitration, so the participants are free to air their concerns even if they do not directly relate to the issues raised in the petition. Mediation, by its very nature, produces more of a win-win result than arbitration, and therefore it can be a step toward improving, rather than exacerbating, the landlord/tenant relationship.

3. WHAT TYPES OF RENT BOARD PETITIONS CAN BE MEDIATED?

At this point, almost all tenant petitions based on decreased housing services and/or failure to repair and maintain are scheduled for mediation. Where unlawful rent increase is checked as an issue on the petition, the petition will not be scheduled for mediation. However, unlawful rent increase issues may be mediated if they happen to arise in a mediation, provided that the lawful base rent can be easily and accurately determined by the mediator at the mediation session. If the unlawful rent increase issue is complicated, the mediation agreement will state that no determination has been made as to the lawfulness of the base rent and the tenant can reserve the right to arbitrate that issue. The mediator

cannot allow a tenant to waive his/her right to the lawful base rent.

Currently, the Rent Board does not mediate landlord petitions for rent increases based on capital improvements or increased operating and maintenance expenses. However, it is possible to mediate a landlord petition based on comparable rents if the parties stipulate to the threshold facts to establish that a rent increase is warranted; in such cases, a mediator can help the parties reach an agreement on the amount of the rent increase.

4. CAN THE MEDIATOR ALLOW PARTICIPANTS IN A MEDIATION TO AGREE TO MORE, OR LESS, THAN AN ARBITRATOR WOULD DECIDE?

Because a mediator does not take evidence in the same way that an arbitrator does, it is very difficult in mediations for a mediator to predict what an arbitrator would decide if she/he were to hear the evidence in an arbitration. Generally, though, participants in a mediation can agree to more or less than an arbitrator might decide. Since the mediation agreement is developed by the participants, the resolution is decided by them, not by an uninvolved third party (i.e. the mediator).

5. OTHER FEATURES OF MEDIATION:

- The mediator signs the agreement along with all parties
- the process is confidential—no tape recording is done except for the agreement, unless both parties agree that it too should be confidential
- strictly voluntary
- one person can represent others, providing that they are authorized in writing to do so
- agreements are written in order to be self-enforcing
  - For example, an agreement may state that if the windows are not repaired within 30 days, then the rent can be reduced by $25 per month until they are repaired.

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